United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-1342

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Respondent, :

-against- Docket 75-1342

LEONARD DURSO,

:

Appellant-Defendant.

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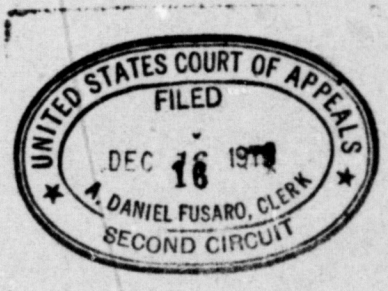
APPELLANT DURSO'S BRIEF



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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

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UNITED STATES OF AMERICA,

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-against- Docket 75-1342

LEONARD DURSO,

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Appellant-Defendant.

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APPELLANT DURSO'S BRIEF

The appellant-defendant Leonard Durso appeals to the United States Court of Appeals from the judgment of conviction entered against him after a jury trial, presided over by Chief Judge Jacob Mishler of the United States District Court for the Eastern District of New York (75 CR 177).

Durso was convicted on counts 2, 3, 5, 7 and 9 of a nine count indictment charging him and three co-defendants with violation of the narcotic laws (21 USC 841) and the extortion in credit statute (18 USC 894).

Count 1 was dismissed by the Court. Durso was acquitted by

the jury on counts 4, 6, and 8.

He received a sentence of ten years concurrent on all counts, together with an additional five year special parole period on the narcotic conviction.

A timely notice of appeal has been filed. The District Court set bail pending appeal in the sum of $25,000.00, which bail Durso has been unable to post. The author of this brief was his retained counsel at the trial, and is continuing on this appeal as his assigned counsel.

THE INDICTMENT

In its relevant parts, the indictment charges:

COUNT 2

"On or about August 8, 1974 ...thedefendant Leonard Durso knowingly used extortion means, within the meaning of title 18, United States Code, Section 891 (7), to attempt to collect an extension of credit from Harry Haralambus and to punish Harry Haralambus for the non-payment thereof. 18 USC 894 (a).

COUNT 3

"On or about August 11, 1974...defendant Leonard Durso knowingly used extortion means, within the meaning of title 18, United States Code, Section 891 (7), to attempt to collect an extension of credit from Harry Haralambus and to punish Harry Haralambus

for the non-payment thereof. 18 USC 894 (a).

COUNT 5

"On or about September 13th, 1974...the defendant Leonard Durso and the defendant Richard Fabella knowingly used extortion means, within the meaning of title 18, United States Code, Section 891 (7), to attempt to collect an extension of credit from Harry Haralambus and to punish Harry Haralambus for the non-payment thereof. 18 USC 894 (a).

COUNT 7

"On or about February 1974...the defendant Leonard Durso and the defendant John Doe Bebe knowingly, and unlawfully did distribute and possess with intent to distribute approximately one-quarter pound cocaine, a Schedule II controlled substance. 21 USC 841 (a) (1).

COUNT 9

"On or about and between February 1974 and July 1974...the defendants Leonard Durso, Richard Fabella, John Doe Bebe, Christopher Williams, and Harry Haralambus ...knowingly, intently and unlawfully did conspire with each other to distribute and possess with intent to distribute quantities of cocaine, a Schedule II controlled substance, in violation of title 21 United States Code Section 841 (a) (1). 21 U. S. C. 846.

STATUTES INVOLVED

18 USC 891 (7) recites:

> "An extortion means is any means which involves the use, or the express or implicit threat and use of violence or other criminal means to cause harm

to the person, reputation or property of any person."

18 USC 894 (a) recites:

"Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means (1) to collect or attempt to collect any extension of credit, or (2) to punish any person for the non-repayment thereof, shall be fined not more than $10,000 or imprisonment not more than twenty years, or both."

21 USC 841 (a) recites:

"...It shall be unlawful for any person knowingly or intently (1) to manufacture distribute or dispense, or possess with intent to manufacture, distribute or dispense, a controlled substance;"

THE GOVERNMENT'S CASE

Harry Haralambus, an unindicted co-conspirator, testified that in February 1974, and again in March 1974, he acquired on each occasion four ounces of cocaine from Leonard Durso. On each occasion he sold the drugs to William Morton, nicknamed Bebe. Haralambus kept Durso and Morton apart so that they never met one another. Harry Haralambus was alone in Queens on each occasion when he acquired the drugs from Durso. Each time Haralambus met with

William Morton, a Washington resident, to negotiate and sell the drugs, Durso was not present. Neither Durso nor Morton knew one anothers name.

The jury verdict of conviction on count 7 shows that the jury credited the testimony of Harry Haralambus with regard to the first transaction. However, the jury verdict of acquittal on count 8 evidences that the jury did not credit Haralambus's testimony with regard to the second transaction.

Haralambus testified that from March 1974 until September 1974, Durso continuously pressed him for payment of the moneys which Morton supposedly paid for the drugs. Haralambus had told Durso that Morton had not paid in full for the drugs, and there was a sum of money owing. Durso constantly pressed for the repayment of these moneys. Finally on September 13th, Durso did strike Haralambus with his fist, and broke his jaw. For this assault Durso was convicted on count 5. Durso was convicted on counts 2 and 3 for threats implicit in his conversations with Haralambus on August 8th and August 11th. He was acquitted by the jury on count 4, which found no threat implicit in his conversation with Haralambus on August 21st. Also he was acquitted on count 6 which had charged a conspiracy between Durso and Fabella with regard to the use of extortionate means.

The testimony of Haralambus (R.43-229) was corroborated in some respects as to Durso by Peter Mikedes (R. 642-702), and in minor respects by Paul Ridinsky (R. 922-959), and Kathy Ross (R. 1001-1009). Rudinsky and Ross had testified to Durso's striking of Haralambus on September 13th. At no time during the trial did Durso or his counsel deny that Haralambus had been bit by Durso that day. As such the testimony of Ross and Rudinsky was not critical. Durso testified that he did strike Haralambus, but for other reasons.

While the trial was hotly contested, and credibility of Haralambus and Mikedes were very much in dispute, the jury verdict resolved that issue was one of fact. As such at this time we do not challenge the sufficiency of the evidence, though we are duty bound to recognize that the jury accepted the testimony of these government witnesses as to five counts. The jury did not accept the testimony of these government witnesses as to three other counts, which included especially count 8, which dealt exclusively with the second drug transaction.

Fn.

Fn. Haralambus had testified on cross-examination that he had used hallucinating drugs while in the Marine Corps, and that he had told a pyschiatrist while under care, that he could bring on his own hallucinations any time he wanted to do so. All he had to do was just close his eyes, and he could hear any voices he wanted to hear. R. 265-267.
Peter Mikedes had testified on direct examination that in the midst of discussing a drug transaction, Durso had made sexual advances to him. R. 667

At no time did the prosecution offer into evidence any narcotics. The government relied principally upon the testimony of Harry Haralambus that he had acquired and sold drugs in the past. Also the government did not offer into evidence any admissions or confessions with regard to Durso, nor did the government offer into evidence any items seized at the time of Durso's arrest. Basically the trial involved solely conflicting oral testimony.

The government had taped two telephone conversations between Durso and Haralambus which telephone calls were originated from the federal agents' office by Haralambus on August 8th and August 21st. The tapes and the transcripts were admitted into evidence. Exhibit 3 A-4A; R. 522. At no time during the trial did Durso or his counsel challenge the accuracy of the tapes or transcripts or the fact that the telephone calls were made. In fact in his own testimony Durso admitted each of these two conversations, but testified they dealt with a special matter entirely apart from that of the indictment. The jury acquitted Durso with respect to the August 21st telephone call (count 4), and convicted him with regard to the August 8th telephone call (count 2).

THE DEFENSE CASE

Leonard Durso testified, and denied that he violated either the drug laws or the extortion in credit statute. He denied any dealings

in drugs at any time. Furthermore, he testified that he did strike Haralambus but for reasons wholly apart from any factors as set forth in the indictment. He testified that he had heard during the summer of 1974 that Haralambus was cooperating with federal narcotic agents, and was seeking to set up Durso, in an effort to escape his own predicaments. Because of that, Durso became angry at Haralambus and struck him. R. 1071-1081.

Throughout the trial Durso and his counsel took the position that the extortion in credit statute (18 USC 894) did not apply to this type of situation, namely, the recovery of profits from a drug transaction, and that the statute was basically designed to deal with the loan sharking situation. R. 1038-1049. Also prior to trial, Durso had moved to sever the extortion counts from the narcotic counts, on grounds of misjoinder. Rule 8, FRCrP.(#4, 6); also docket entries page B.

In addition, prior to trial, and at the close of the government's case, Durso had moved to dismiss counts 3, 4 and 5, on the grounds of multiplicity in that the extortion statute is concerned with a single offense rather than distinct and separate offenses.(#4,6); also docket entries page B.

POINT I

18 USC 891 and 894 WAS NOT INTENDED BY CONGRESS TO APPLY TO MISDEEDS INVOLVING THE RECOVERY OF LOST PROFITS FROM A DRUG TRANSACTION, AS SET FORTH IN COUNTS TWO, THREE AND FIVE.

Counts 2, 3, and 5 charged Durso with using extortion to recover the lost profits from the earlier drug transaction between himself and Haralambus. Durso was the source of Haralambus' drugs, which he had sold to William Morton. Durso and Haralambus were to split the profits fifty-fifty after recovery of the cost. Haralambus was not able to collect the necessary sums of money from Morton to be able to pay Durso his share of the profits. It was on the basis of these moneys owed that Durso threatened Haralambus.

We submit that a reading of the legislative history of the Consumer Credit Protection Act, PL 90-321, and more particularly Title II; "loan shark" amendments (18 USC 891-896) makes it crystal clear that Congress never intended this statute to be applicable to situations where one partner to an illegal drug transaction presses his other partner to recover lost profits.

The legislative history of the statute is to be found in the reading of the opinion of this Court in United States v. Perez, 426 F2d 1073, 1074-1075, 1079 (CA-2, 1970) and the opinion of the High Court in the same Perez case, 402 U. S. 146, 147, 149-150, 155-157 (1971). Also see 1968 U. S. Code Congressional and Administrative News, at 1962, 2021-2030. Also see Volume 114, Congressional Record, 14375-14398, 14486-14493.

Also 18 USC 892 (b) (2) recites that an extention of credit at a rate of interest in excess of 45% per year shall be considered extortionate. This special section alone evidences that Congress was concerned only with usurious loans. The total reading of the legislative ruling, including the two Perez opinions, makes it clear that Congress was concerned with loan sharking. In no way was Congress concerned that two partners to an illegal drug transaction carved up profits between themselves.

In this court, in Perez, 426 F2d 1073, 1074-1075, 1079, Judge Feinberg makes extensive reference to the legislative history that the statute was a far reaching attempt to control "the vicious billion dollar a year loan sharking racket, 114 Congressional Record 14384".

Judge Feinberg refers to the legislative findings, and to the evidence at Congressional hearings, to the effect that loan sharking is a disastrous business, and that Congress could do well to prohibit it. 426 F2d at 1079. Judge Feinberg states;" this provided the logical basis for Congressional focus on loan sharking rather than on a variety of other crimes which may be far more local in nature. 426 F2d at 1073.

In summary Judge Feinberg wrote, "it is clear from the above that the statute is a comprehensive federal attack on loan sharking". 426 F2d at 1075.

In the High Court, in the same Perez case, 402 U. S. 146, 147, 149-150, 155-157 (1971), the script read pretty much the same Mr. Justice Douglas refers to the legislative history with regard to Title II of the Act, known as the loan shark amendment. He refers to the Congressional debate. 402 U. S. at 149-150. He refers to the Congressional findings and the Congressional reports dealing with this particular industry. 402 U. S. at 155-157. In summary Mr. Justice Douglas writes (402 U. S. at 156-157):

> "We relate the history of the Act in detail to answer the impassioned plea of petitioner that all that is involved in loan sharking is a traditional local activity. It appears instead that loan sharking in its national setting is one way organized interstate crime holds its guns to the heads of the poor and rich alike and syphons funds from numerous localities to finance its national operations."

Just recently Judge Friendly cautioned us with regard to reading and misreading criminal statutes to apply them to statutes as to which Congress never intended them to apply. In United States v. Rivera, 513 F2d 519, at 532 (CA-2-1975), Judge Friendly wrote:

"...courts should not extend criminal statutes to cases where Congress clearly did not intend them to apply but insufficiently expressed its intent."

In short, to read a statute literally, in defiance of its legislative purpose and history, is to misread that statute.

POINT II

THE DISTRICT COURT ERRED AS A MATTER OF LAW WHEN IT DENIED THE PRE-TRIAL MOTION (Rule 8) TO SEVER THE EXTORTION COUNTS FROM THE DRUG COUNTS.

Rule 8 (a) of the Federal Rules of Criminal Procedure permit joinder of two or more offenses if "...if the offenses charged ...are based on...two or more acts or transactions connected together or constitute parts of a common scheme or plan."

Judge Mishler denied the pre-trial motion for severance in the following language (#6):

"...It is clear that the extortionate means counts (1 to 7) and the narcotic violation counts (8 and 9) are "connected together or constitute parts of a common scheme or plan". (citations)

Additionally, the Court is convinced that the same evidence would be offered in the trial of defendant on the extortion charges even though counts 8 and 9 were severed. Consequently the motion to sever counts 8 and 9 is denied".

The Court is invited to read the opinion of Judge Friendly in United States v. Granello, 365 F2d 990,993-995 (1966) discussing the application and purpose of rule 8. Judge Friendly points out that a rule 8 severance application "raises a question of law in the strict sense" whereas a rule 14 severance applicatic.. raises only a question of "discretion". 365 F2d at 995.

In Granello this Court recognized that a rule 8 issue is subject to the harmless error rule, and affirmed the conviction because no prejudice from t.. joinder could possibly have occurred. 365 F2d at 995.

In our situation we submit that a separate trial of the extortion counts need not have referred to the drug transaction, and the many many meetings and phone calls that were part of the testimony with regard to the transaction. Also we submit that a narcotic drug charge is so potent and prejudicial as to have an overwhelming effect upon a jury when it considers any other charge, as in this instance an extortion charge. As such we are not dealing with the mild charges of income tax or stock manipulation that was to be found in Granello. We are dealing with counts which basically make the hair of any juror stand on edge. Also see Wright, Federal Practice and Procedure, section 143, and 8 Moore's Federal Practice sections 8.05 and 8.06.

Footnote

See next page for footnote.

POINT III

THE SEVERAL EXTORTION COUNTS ARE MULTIPLICITOUS, AND IT WAS ERROR FOR THE DISTRICT COURT TO HAVE SUBMITTED MORE THAN ONE SUCH COUNT TO THE JURY.

Durso was convicted on three counts of use of extortion (counts 2, 3, 5).

Footnote- In the same omnibus pre-trial motion (#6) Durso moved for a Bill of Particulars as to the "date, time and place," of each of the substantive offenses charged in counts 1 to 5, and 7 and 8. In its memorandum decision (#7) the District Court denied the application in the following language:

> "Defendants Durso and Fabella demand a Bill of Particulars specifying the "date, time and place of each offense charged in counts 1 to 5, and 7 and 8. ***The demand as to date, time and place is denied as to counts 1 to 5 and 7 and 8 (requested items 1 and 3)."

This writer recognizes that in general the granting of a Bill of Particulars is discretionary, and usually not appealable. However, without making a separate point of it, I do request this Court to rule that time, date and place is so elementary and basic that the refusal of the District Court to order particulars in such limited scope is reversable error. Basic notions of notice and due process require at the least that between the indictment and the Bill of Particulars, the defendant should know at least the date, time and place of the alleged offense.

He had originally been indicted on two such additional counts, but the jury acquitted him on count 4 and the District Court dismissed count 1.

Prior to trial, in his omnibus motion, Durso had moved to dismiss the original five counts on the ground of multiplicity. In denying the motion, Judge Mishler wrote (#6):

> "Defendant Durso also moves to dismiss counts 1 to 5 on the ground that these counts are multiplicitous.
>
> *****
>
> Here each count charging extortionate means is alleged to have occurred at a different time. The government also represents that different means were employed in each. (citation) It is clear then that each count alleges a separate offense, even though the debt is the same. Therefore the motion to dismiss counts 1 to 5 for multiplicity is denied."

In United States v. De Stafano, 429 F2d 344, 347-348 (CA 2, 1970), this Court discussed, but did not resolve, the issue of whether with regard to the loan sharking statute (18 USC 894), Congress intended to create a single offense as opposed to separate and distinct offenses with regard to each instance in the use of a threat or extortion. Judge Feinberg wrote that in this regard he found the legislative history of the statute "modest at best" and "unilluminating on this point". 429 F2d at 348. As this Court did not find De Stafano prejudiced by his conviction on multiple counts, the Court postponed to another day the

resolution of this issue. 429 F2d at 348.

In our situation we have the additional factor that the jury had acquitted Durso on count 4 which charged the use of extortion on August 21st, and the District Court had dismissed count 1, which had charged extortion on March 20th. Therefore it remains very much up in the air what the jury would have done if it had to consider only one count (rather than five counts) the totality of Durso's conduct on March 20th, August 8th, August 11th, August 21st, and September 13th. It is really not for us to guess what the jury would have done. As such it is necessary for this court to come to grips with this issue to decide whether Durso was denied his due when the trial court submitted four counts to the jury when perhaps he should have submitted only one. Furthermore, it is questionable whether an indictment should have carved out additional counts when the legislative history of the statute does not make clear that Congress intended that numerous courts could be brought with respect to the same extension of credit. Basically we submit that unless the Congress makes it crystal clear that it contemplated the creation of separate and distinct defenses, as opposed to a single offense, an indictment should not charge multiple offenses.

POINT IV

THE DISTRICT COURT ERRED BY NOT DIRECTING A COMPETENCY HEARING AS TO HARRY HARALAMBUS, AND BY NOT RULING ON THE COMPETENCY OF HARALAMBUS.

Haralambus was the principal witness for the government. His credibility was very much at issue for any number of reasons, which included his not being indicted in this case, his deals with the government in this and other matters, his heavy use of drugs continuously over the years, and his pyschiatric problems which arose during his service with the Marine Corps in Vietnam. In fact the jury's acquittal of Durso on the second drug transaction evidences that the jury did struggle with the question of Haralambus' credibility.

On the other hand, we submit that Haralambus' psychiatric problems were so deep that the District Court should have ruled as to whether or not he was competent to testify as a witness. Haralambus had testified on cross-examination (R. 265-267):

"Q. And actually while you were in the Marine Corps, you had been using hallucination drugs, isn't that right?

A. Yes.

*****

Q. In fact do you remember telling the psychiatrist that you could have hallucinations that were self induced?

A. I cannot recall.

Q. Do you remember telling the psychiatrist that all you had to do was to close your eyes at will and you could hear voices as you wanted to hear them? Do you remember telling that to the pyschiatrist?

A. I don't recall.

Q. Let me show you Exhibit 3500-5, page2, and ask you to look at it and see if it refreshes your recollection?

*****

Q. Now let me ask you, does it refresh your recollection that when you were in the service you said to the pyschiatrist, in words orsubstance, that you could have hallucinations, you could bring on your hallucinations, all you had to do was to close your eyes at will and you could hear voices as you wanted to hear them? Do you recall that?

A. Yes.

In the recent case of United States v. Gerry, 515 F2d 130, 137 (CA 2, 1975), this Court held that under similar circumstances, when the District Court is confronted with evidence as to the possible lack of competency of a witness, the District Court should conduct a hearing, and decide as a matter of law, whether the witness is sufficiently competent so as to be able to testify.

Perhaps this opinion was just too recent at the time of the trial to have come to the attention of the trial judge and trial counsel. It may well be in order to remand this matter to the District Court to decide this particular issue, while retaining jurisdiction of the appeal to decide all other issues. Alternatively (but not preferably,) this Court could decide this issue on its own.

POINT V

THE DISTRICT COURT ERRED WHEN IT DENIED DURSO'S MIS-TRIAL APPLICATION AT THE TIME OF THE SEXUAL INCIDENT TESTIMONY.

In direct examination, while testifying to a conversation with Durso as to the details of a drug delivery, Peter Mikedes testified Durso made a sexual advance towards him. R. 667.

Durso's counsel promptly objected to the answer, and moved to strike it from the record. The trial judge sustained the objection, and directed the answer be stricken. R. 667.

Durso's counsel then moved for a mistrial on the grounds of prejudice (R. 667) stating (668, 669):

> "Mr. Wales: Your Honor, this is certainly not any evidence which is in any way probative of the indictment that they are charging.
>
> ****
>
> I think it shows - or it - the jury could, if they wished to infer that there is something wrong with Mr. Durso--it's something which the jury could well in terms of their own social attitude look unfavorably on Durso in this particular light and could be a factor that they could use--utilize if they saw fit in deciding this case, but reflects unfavorably upon Durso.
>
> For that reason, it is prejudicial without being probative of the Government's case. "

It is not sufficient the trial judge told the jury to forget what they heard. Testimony of deviant social behavior is not easily forgotten by a jury. On the contrary, it has great appeal which enables it to be

recalled long after other evidence is forgotten. It has a potential value seriously eroding the credibility of a defendant. As Durso in fact did testify, and had placed his credibility on the line, this factor may well have turned the jury against him on the issue of credibility. Accused homosexuals just do not rate highly in the eyes of jurors and other laymen.

POINT VI

THIS COURT IS REQUESTED TO STUDY THE TRIAL RECORD AS IT PERTAINS TO DURSO, AND DECIDE WHETHER OR NOT HIS TRIAL COUNSEL PROVIDED HIM WITH EFFECTIVE REPRESENTATION.

The author of this brief was Durso's retained counsel at the trial, and was assigned by this Court to represent him on the appeal pursuant to the Criminal Justice Act. Durso had requested this Court to assign other counsel because of what he claimed was ineffective representation by his trial attorney. He failed to spell it out to this Court in his application, and so no change in counsel was made.

Durso has just recently sent the author of this brief a letter stating that in many ways with regard to cross-examination of government witnesses, preparation of pre-trial motions, and the raising of legal issues, that he believes his trial counsel did not do all that could have been done. Durso believes that trial counsel was remiss in not raising the issue of competency of the witness Haralambus, and not asking the District Court

to rule the witness incompetent. See Point IV of this brief.

I do request this Court to evaluate the trial record as it pertains to Durso to decide whether or not his trial counsel gave him his due. The applicable standard to be applied is set forth in the opinion of this Court in Matalon v. The United States 445 F2d 1215, 1218-1219 (CA-2, 1971).

My cross-examination of the witness Haralambus is to be found at R. 232-332, and 570-575; that of Peter Mikedes is to be found at 703-736; cross-examination of Paul Rudinsky is to be found at 962-977, that of Michael John at 993-995 and that of Kathy Ross at R. 1009-1029, and R. 1034-1035.

Argument on the motion for judgment of acquittal is to be found at R. 1038-1049, 1051. Discussion of Durso's request to charge are to be found at R. 1224, 1237. Counsel's summation is to be found at R. 1256-1278. Exceptions to the court charge are to be found at R. 1485-1492.

The pre-trial omnibus motion for discovery and inspection, Bill of Particulars, and severance (Rule 8), with supporting memorandum of law, are to be found at #4 and 6.

CONCLUSION

We submit that on the basis of the just discussed issues of law, the appellant Leonard Durso, is entitled to a reversal and dismissal on certain counts, and a new trial on others. Alternatively, we submit that if one or more counts are reversed and dismissed, but a new trial is not directed, this Court should remand this matter back to the District Court for re-sentencing.

The sentence imposed in this case illustrates well the desirability that we quickly have appellate review of sentences. For delivering one ounch, and selling four ounces of cocaine, Durso did receive a ten year sentence.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

Index No.

Docket 75-1342

UNITED STATES OF AMERICA,
Respondent *Plaintiff*

against

LEONARD DURSO,
Appellant - *Defendant*

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF New York ***ss.:***

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at
Queens, New York.

That on December 11th *1975 deponent served the annexed*
Appellant Durso's Brief
on Richard S. Stolker, Esq.
attorney(s) for Respondent plaintiff
in this action at Criminal Div. United States Department of Justice, Washington, D.C. 20530
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me
this 11th day of December, 1975

Lillian Kurtzer
The name signed must be printed beneath

H. ELLIOT WALES
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-4129915
Qualified in Kings County
Commission Expires March 31, 1976

C 321—Affirmation of Service of Papers by Mail.
Affidavit of Service By Mail on Reverse Side.

Index No.

Plaintiff

against

Defendant

ATTORNEY'S AFFIRMATION OF SERVICE BY MAIL

STATE OF NEW YORK, COUNTY OF ss.:

The undersigned, attorney at law of the State of New York affirms: that deponent is attorney(s) of record for

That on 19 *deponent served the annexed*

on
attorney(s) for
in this action at
the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

The undersigned affirms the foregoing statement to be true under the penalties of perjury.

Dated

The name signed must be printed beneath

Attorney at Law